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Voyages of *H.M.S. Beagle*

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VOYAGES ON *H.M.S. BEAGLE*

Donald P. Judges*

INTRODUCTION

MICHAEL Kelly's *Lives of Lawyers* models its message: Just as no single picture of "professionalism" is sufficiently fine-grained to portray the multifaceted nature of modern legal practice, neither is any single book capacious enough to cover the subject.¹ Kelly sees not one legal profession but many, the diverse values and norms of which are defined in large measure by the variegated and evolving nature of the practice organizations in which today's lawyers find themselves. He illustrates his point by taking the reader on a narrative sojourn of five practice settings that differ in size, institutional priorities and style, financial circumstances, and area of practice. Four are in the private sector (one of which is in-house to a corporation) and one is public. The result is an intriguing perspective—which is *from* but not *of* the "inside"—on a representational (though not necessarily representative) cross-section of practice organizations.

Lives of Lawyers should appeal to a wide audience. For the general reader, it provides a refreshingly genuine alternative to the legal profession's frequently caricatured image—the lawyer either as an instant celebrity performing in a fictional or real-life soap opera or as a faceless, destructive pest gnawing at the woodwork of the social and economic order. The book's most direct contribution, however, is the perspective that it offers to the legal profession itself. Rather than attempting to tell lawyers what is wrong with their lot, Kelly assists them in gaining insight into the complex and dynamic interaction between the shifting organizational, personal, and financial forces that bear on the settings in which they practice.

The book will be of special interest to prospective lawyers: It supplies current and future law students with an invaluable array of considerations as they contemplate how, where, and whether they will pursue their legal careers.² Many students look to summer clerkships to teach them about

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1. MICHAEL J. KELLY, *LIVES OF LAWYERS: JOURNEYS IN THE ORGANIZATIONS OF PRACTICE* (1994). "The meaning of professional values is now so malleable that the terms *professional* and *professionalism* are now well-nigh useless. No commonly accepted definition of profession exists." *Id.* at 13.

2. In this last connection, law teachers may well want to consider using *Lives of Lawyers* to help students explore the practical challenges that await them. The book is not, however, structured as a primary text and would not be likely to be adopted as such in a

the "real" world of law practice, but few could cover in several seasons the range of practice experiences described in *Lives of Lawyers* and virtually none will be fortunate enough to have as sophisticated a guide as Kelly to help them interpret their observations.

The book's strengths—its "quasi-insider's" perspective, narrative method, and deep rather than wide scope—also mark its limitations. One book can only do so much, and *Lives of Lawyers* accomplishes its goal in good form. Kelly's long-time interest has been the construct of "professionalism"; and his book makes a useful contribution in replacing the mythic, wistful, Rockwellian image of the "professional" with actual footage, astutely narrated, from attorneys' offices.

But there are other vantage points from which to consider the state of the profession. For example, working from Kelly's conclusion that the "personalities" of practice organizations shape the professional and personal experiences of their participants, one might also seek better to understand the profession by describing in greater detail the characteristics of those "personalities" and their likely impacts. Such an approach would be more empirical and clinical than anecdotal and philosophical. This observation, while suggesting avenues for future research, also suggests a chief virtue of Kelly's approach that should come as no surprise to lawyers fortunate to have had him as a teacher and dean in law school: He has a point to make about the profession, and makes it elegantly; but he neither presumes to sit in judgment nor purports to have the final say on his subject. He leaves his readers, as he left his students, to ponder his observations, form their own questions, and seek their own answers.

I. *LIVES OF LAWYERS*

A. THE HYPOTHESIS

Kelly adopts the role of witness to, rather than critic of, lawyers' struggles to adapt to a changing and sometimes unforgiving environment. His goal is to understand the impact of that evolution on the concept of professional life. The diverse phenotypes of species *homo advocatus*, Kelly urges, must be observed in their respective ecological niches.³ His premise is that "the culture or house norms of the agency, department, or firm play a dominant role in the way a lawyer practices. . . . [Therefore,] no

course on "professional responsibility" or in a skills- or practice-related curriculum. The book's hard-cover cost may make it unattractive as a supplement. Nevertheless, the book contains much material that would be useful in the classroom. One can only hope that it becomes available in paperback or that selected portions find their way into an anthology of practice-related issues. See, e.g., *LAWYERS' IDEALS/ LAWYERS' PRACTICES: TRANSFORMATIONS IN THE AMERICAN LEGAL PROFESSION* (Robert L. Nelson et al. eds., 1992) (collection of essays on the nature of legal professionalism).

3. "Understanding the character of different organizations of practice, their texture, their acoustics, or the way participants work within them—their unique culture—is indispensable to understanding the nature of change in the contemporary profession and the extraordinary heterogeneity of professional values within various types of practice organizations." KELLY, *supra* note 1, at 17.

coherent account of professionalism, legal ethics, or the contemporary legal profession is possible without understanding the workings of practice organizations."⁴

B. THE STORIES

Kelly compiled his mosaic of law practice from his observations as a kind of itinerant historiographer in a culturally pluralistic but familiar region, rather than as an investigative journalist on an adversarial beat.⁵ Apart from some measure of diversity, the criteria by which Kelly selected his sites is unclear; but he obviously was constrained by firms' willingness to permit him access and by the immensely time-consuming process of in-person interviewing. He mentions in his Afterword that he submitted his text for prepublication review to the subjects of his study and made changes in response to their comments. And he concedes that the composition of his sample through self-selection, review of his text by his subjects, and reliance on their self-report probably compromised the accuracy of his information. But he explains that

My overriding concern was to capture what it was like to be in that organization, so that the people in it would say I was being fair, that it was an honest portrait—not brutally honest to the point of indiscretion, or a needless reopening of old wounds—but an honesty that reflected the realities of the place, a portrait by an honest friend, not an enemy or an academic showing off.⁶

While such qualifications plainly detract from the validity of Kelly's observations as a matter of even anecdotal social science, it is difficult to see how he could have obtained his stories through other means. Anyone familiar with careful, diligent lawyers zealously committed to protecting their clients' and their own confidentiality will be impressed, even amazed, by the level of trust and candor that Kelly apparently managed to inspire. His subjects may have been unusually self-confident, but it is an extraordinary thing for a law firm to allow an interloper *any* access to its inner workings—especially when there is no immediate business advantage in doing so.

As Kelly notes, correctly in my view, the stories are "revealing because they are written with a form of assent, or participation in the story writing, by the characters of the story."⁷ Kelly's rendition is masterful: he deftly creates the illusion that he has disappeared into the background so that the stories seem to tell themselves. In this way, the reader is allowed to draw his or her own conclusions about the stories' meanings. Yet by the time the reader reaches Kelly's analysis of the narratives, the facts have been so adroitly presented that Kelly's interpretations fall neatly

4. *Id.* at 18.

5. Kelly protects the anonymity of the subject organizations, and sometimes the individuals within them, by "creating a veneer of fiction in order to strengthen the quality of the nonfiction." *Id.* at 230.

6. *Id.* at 234.

7. *Id.*

into place. This is not to suggest that Kelly has skewed the record, or deceived either his subjects or his audience, but instead that he has accomplished a story-telling *tour de force*: He has simultaneously allowed the characters to speak for themselves and composed an intelligible pattern out of the resulting narrative flow.

The stories:

1. *Soaring to the "Statusphere"*

"'Money holds it all together.' That is the view of partner Richard Stoller, who describes the end of March as a troubling time each year when people are awaiting the decision of the compensation committee."⁸

Kelly's first story is about a relatively young, rapidly growing firm on a steep trajectory to the "big leagues." The predominant institutional values at McKinnon, Moreland, and Fox are profitability, aggressive growth (largely through merger), and meritocratic stratification (with merit defined in terms of productivity). Kelly focuses on three contexts: associate recruitment, training, management, and advancement in the face of breathtaking inflation in starting salaries among the major big-city firms; growth by acquisition; and internal management, particularly the all-important division of profits.

The firm leaders' central, but pragmatic, concern with money, growth, and status emerges in each context. The big-firm bidding wars for top entry-level talent present McKinnon with a dilemma: The firm worries that it must offer competitive salaries if it is to run with the big dogs, or risk being left on the porch. But the financial and cultural implications of paying for such a decision (including the ripple increases to mitigate the salary "compression" among senior associates and junior partners) are widespread; the squeeze will be felt at all levels. Expectations for billable hours—at a firm already regarded by some as a sweatshop—will increase. Salary distinctions among associates and nonequity partners will decrease. Even more emphasis will be placed on business generation. More associates, and some partners, will find themselves weeded out of an increasingly competitive work environment.

The cumulative consequence of McKinnon's decision will be to intensify the dominant cultural characteristics of the firm. The gravitational force of money on all aspects of the practice will wax even stronger. The firm will become an even harder-working, more driven, more business-like, and more competitive place. Lawyers who want a more balanced life, with some time for family and non-work pursuits, will be even less attracted to and less welcome within the firm.

Kelly takes the reader through three merger negotiations—one that led to an uneasy but ultimately successful merger, one that led to a more comfortable acquisition, and one that failed to be consummated. The

8. *Id.* at 47-48.

first merger, with the O'Connor firm, created some culture shock for the incoming associates. They found McKinnon to be more formal, more bureaucratic and impersonal, more prone to office politics, and more concerned about billable hours than their previous setting. And, despite the soundness of the merger from a business point of view, some McKinnon partners were upset by what they felt were excessively generous concessions to some O'Connor people. The merger with the environmental department of Michaels and Todd, by contrast, went smoothly from McKinnon's perspective. In some respects, such as academic credentials and level of formality, the cultural gap between McKinnon and Michaels was even wider than with the O'Connor firm. The shock to the Michaels associates, who felt forced to move, may have been greater. But eventually the Michaels group carved out its own niche within McKinnon, and gave up trying to assimilate to the McKinnon culture. Business and not personal connection is, after all, the basis for the relationship. The abortive merger, which failed because of doubt about its business soundness and the work ethic of the potential incoming partners, as well as for other reasons, illustrates the decision-making process at McKinnon.

Kelly describes that process as involving a surprisingly open exchange of views among the partnership with respect to many issues. For example, the new people from O'Connor "were amazed at how open, how contentious and vigorous was the discussion [concerning the failed merger], and particularly pleased to know there were no hard feelings in its wake."⁹

What is not open for critical examination, however, is the core value of the firm—its bottom-line orientation. That value is expressed through what may be the most defining characteristic of the firm's management structure (perhaps more so than its organization as "a confederation of autonomous units"), its compensation system. McKinnon creates financial incentives for business development even at the junior associate level. Unlike the lockstep approach to associate compensation at other large firms, McKinnon differentiates among associates as early as eighteen months. Partner compensation is heavily dependent on productivity. The firm deliberately seeks to "lower the comfort level" of its attorneys, to replicate the "driven and upward[ly] mobile" work ethic of the firm's leaders: "McKinnon 'works you to death and pays you oodles of money.'"¹⁰

The human costs are high. Kelly notes that "[i]t is easy for partners as well as associates to feel insecure and stressed in a firm that prides itself on a 'lower comfort level.'"¹¹ He describes one partner's musings whether the long, hard hours are worth it: "He has no hobbies. He likes being with his family. He wonders whether he will be a lawyer the rest of his life. . . . [A] number of lawyers indicate that the next move will be out

9. *Id.* at 45.

10. *Id.* at 51-52.

11. *Id.* at 50.

of law."¹² The firm's profit orientation also is reflected in the scant emphasis placed on pro bono work; the firm apparently makes little more than a token effort in that regard.

2. *We Are Family*

*"Schultz is careful to avoid another evil he associates with large firms, the destructive internal competition over who bills the most or who is the most valuable to the firm. In his view, such an environment is costly to a firm because it weeds out sensitive and reasonable people."*¹³

Kelly's second example is a firm as different from McKinnon in its values as Jimmy Carter is from Ronald Reagan. At Mahoney, Bourne, and Thiemes, "leveraging out one's compensation to the maximum is 'not the game.'"¹⁴ Although the firm cultivates a strong work ethic, apparently generating through loyalty a volume of sweat from *all* of its personnel that is comparable to some big-firm standards (with average billables reported to be in the 2,000-hour-a-year range), its spirit is cooperative and egalitarian rather than competitive and hierarchical. There are no minimum billable hours; compensation is not tied to billing; partners share equally in firm profits; and symbolic pecking-order distinctions between partners and associates (such as office size and letterhead placement) are absent. And the big-shot partner's ego-inflating prerogative of bullying associates and support personnel, so familiar to subordinates at less caring firms, is not tolerated at Mahoney.

The firm's values are further reflected in its strong commitment to public service, its hiring practices, and its business development. "Here, public service is on an equal footing with, and sometimes even prevails over, economics."¹⁵ In its hiring, "[t]he firm tries to avoid what Schultz calls 'the vertical personality,' loosely defined as the kind of person who shows respect to everyone above him or herself in the pecking order, has uneasy competitive relationships with peers, and treats everyone below 'like shit.'"¹⁶ Instead, the firm patiently seeks lawyers at the entry and lateral levels who share its values. And the firm is careful in the clients it seeks. It strives for a solid base of "relationship" as opposed to "episodic" clients. The clients are the firm's rather than individual lawyers', and the firm builds close and deep ties to its clients.

The firm's economic structure is truly remarkable. The firm makes good money, yet its partner-owners' take is surprisingly low. "[I]t seems fair to say, at least compared with the published numbers of large law firms in similar marketplaces, that Mahoney must be considered a financially sound and successful practice."¹⁷ Kelly concludes that the firm's

12. *Id.* at 51.

13. *Id.* at 59.

14. *Id.* at 58.

15. *Id.* at 61.

16. *Id.* at 64.

17. *Id.* at 75.

owners, unlike those of many other firms of comparable size, do not seek to maximize their personal profit from the practice. Instead, “the numbers indicate that Mahoney treats its nonpartner lawyers differently than large firms: they are compensated more generously (not in absolute terms but compared to the highest-paid partners) and have far better access to becoming equity partners.”¹⁸

The Mahoney firm’s distinctive values derive from its benevolent managing partner and primary rainmaker, Chris Schultz. “‘He tries to make this place the way he is—nonhierarchical, friendly, good to people at all levels, realizing that law isn’t the only thing, hardworking, fun loving.’”¹⁹ He is living proof that “lawyers willing to state and live out their values and moderate their income can build the firms they want.”²⁰ Schultz is no soft-headed visionary; he put the firm on a sound business footing upon the death of its charismatic but unbusiness-like founder, Brian Mahoney. Rather, he believes that “money, while not unimportant, is not the most important motivator for a professional.”²¹ He leads by example, taking as his share of firm profits less than twice the compensation of the most junior partner—a portion that “is outrageously low by almost any standard.”²²

3. *The One and Only Client*

*“There is a touch of righteousness in the way Standish lawyers view the relationship with the client as a full commitment of work, understanding, and preventive care.”*²³

Kelly’s third story is of the in-house legal division of Standish, a large real-estate development company. Kelly reverses the stereotype of the in-house lawyer as the lap dog of the company and the outside counsel as the sage, independent advisor. For example, Standish’s Legal Division found itself saddled with the abusive billing practices of an outside law firm, Butler, chosen by the lender on a major project. Butler’s churning threatened to undermine the economic viability of the project, but Standish’s Legal Division eventually succeeded in rescuing the situation. According to Kelly,

The most important lesson conveyed by stories of the billing shenanigans of Butler comes from deeper, almost intangible ideas about

18. *Id.* at 76.

The comparisons with large law firms underscore the fact that the articulated ethos of building the firm and creating an environment of equal treatment of people carries over to the economics of the firm. Generosity to maturing associates, younger partners, and support staff takes clear precedence at Mahoney over profitability to partners, at least in comparison with the profitability leaders among large firms.

Id. at 77.

19. *Id.* at 78.

20. *Id.* at 77-78.

21. *Id.* at 81.

22. *Id.* at 81.

23. *Id.* at 91.

what it means to be a good lawyer. One of the striking features about the discourse of the lawyers of the Legal Division is that they rarely refer to Standish, or divisions of the company, or individuals in the company: they talk in terms of "the client." . . . McGill [the Legal Division's head] views this as a way of emphasizing the distinction between the lawyers and the business people, reminding the lawyers that the client is the principal and "we are here to serve them," and keeping the lawyers in touch with their ethical responsibilities.²⁴

The attorney-client relationship at Standish in some respects is closer to the nostalgic ideal than that of outside counsel to their clients, and creates a positive working environment for the lawyers:

The orientation of Legal Division lawyers toward the client has an old-fashioned flavor to it. One of the attractions of working for Standish mentioned by virtually every lawyer in the division is a special closeness with the business people. They talk of unincumbered exchanges that break down barriers between lawyer and client. The client is, after all, a coemployee or peer, relating to the lawyer without the baggage and tension generated by the omnipresent clock measuring billable-hour expenses of the relationship. . . .

[Because of their intimate understanding of the client, the division's lawyers] express a clear sense that they have more influence, more leverage over the client than the average private practitioner. To a person they feel it is easier for them to say no to their client than it is for an outside lawyer. They have a connection of trust with the client that enables the client to accept what he or she may not want to hear, without misunderstanding or hard feelings.²⁵

By all accounts, Standish's Legal Division is a lean, well-run practice organization that has succeeded in striking a relatively healthy balance between productivity and humaneness. McGill has been ever-resourceful in finding ways to maximize the unit's efficiency and productivity—including greater reliance on paraprofessionals to perform routine leasing tasks, thereby freeing up lawyer time for more effective (and fulfilling) use. Yet this efficiency is not purchased through ruthless or autocratic management style:

Standish is a more democratic society than the large firm. There is much more bottom-up management in which employees buy in to new ideas through discussion of new moves and initiatives. . . . Legal assistants report that Standish is a relatively caring, people-oriented place where management listens carefully [and treats them with respect].²⁶

The Legal Division is exceedingly deliberate in its attorney hiring; McGill is concerned with how recruits' "personal and professional values mesh."²⁷ Standish's Legal Division is neither a sweatshop nor a retire-

24. *Id.* at 90.

25. *Id.* at 90-91.

26. *Id.* at 99.

27. *Id.* at 100.

ment home; its lawyers include some workaholics, but its culture is not dominated by the driven, ambitious striving of a firm like McKinnon. Consequently, the Division attracts well-credentialed lawyers who take pride in craftsmanship and serving their client, but who also want a better balance between their personal and their professional lives. Quality of work is important to them, but quality of life is not measured primarily in dollars.

Although money and status may not be everything or the only things in the Legal Division, compensation and advancement are points of discontent. There is some dissatisfaction with the disparity between top-level compensation on the business side and that of the Division. Experienced lawyers in the Division also see a growing gap between their pay and the earnings of their peers in large-city private practice. Division lawyers, moreover, also see themselves at a disadvantage with their business-side peers at Standish. Like many law firms, the company rewards entrepreneurial productivity with bonuses; but the lawyers are simply not in a position to generate easily quantifiable contributions to deal-making—even if their expertise and guidance play a crucial role. Finally, because the Division's organizational structure is constrained by its place within the company's hierarchy, opportunities for advancement are limited.

Nevertheless, on balance the practice appears to be rewarding. Division lawyers believe in and are proud of their client. They feel a part of the business and “at the cutting edge of national real estate practice.” And “the general feeling is that the division is comprised of good, hardworking, and helpful colleagues who engage in virtually none of the internal politics or climbing over backs to get ahead that is said to characterize many law firms.”²⁸

4. *When the Client Is the Public*

“An experienced lawyer before the commission described Joe and his group as ‘soft-spoken, but bulldogs underneath.’ ”²⁹

Kelly offers another stereotype-defying story—that of the lawyers in the Legal Division of the Maine Public Utility Commission. Once the virtual captive of the industry it was charged with regulating, the Commission eventually found its independence in large part through the influence of the Legal Division. This story shows how dedicated, relatively low-paid public-sector lawyers can indeed make a difference. Once a gift-taking, drowsy little office that enjoyed a cozy relationship with the utility companies, the Commission was transformed into a more effective regulatory entity under the influence of Horace Libby, General Counsel of the Commission. By the time of his premature death, Libby had assembled a team of bright, aggressively reformist attorneys who carried forward his tradition.

28. *Id.* at 114.

29. *Id.* at 122 n.6.

Eventually, changes on the Commission itself (and in public opinion) toward a more proconsumer orientation partly eclipsed the dominance of the Legal Division. And, under the guidance of Libby's successor, the advisory roles of the Technical and Finance Divisions came to have more impact. But the Legal Division played a role in a sensational case that dramatically altered the relationship between the Commission and a major utility toward a more responsible and cooperative posture by the utility.

Apart from the low pay and heavy workload, several other features distinguish the professional role of Legal Division lawyers. For one thing, there is no corporeal "client." For legal, historical, and ethical reasons, the Commission is not the client. The "public" is the client in the abstract, but identifying who the public is and determining its interests are not simple tasks. Legal Division lawyers find that they often must fall back on their own consciences and judgments in addressing complex legal and policy issues for which there is no clearly "right" answer. The weight of that responsibility is augmented by a quirk of Maine law that allows Legal Division attorneys to sit as hearing examiners and hearing examiners to consult with commissioners.

The staff attorneys are talented, enthusiastic, and committed; and they enjoy a sense of camaraderie. Although overworked and underfunded, they find satisfaction as part of a team that is fighting to protect the public interest. The private bar respects them as hardworking and very capable. And they seem to enjoy holding their own against the highly paid and resource-rich lawyers and economists hired by the utilities.

5. *Not Doing All That Well by Doing Good*

*"They both sense that it has become harder and harder to practice in the manner they have done for the past fifteen years: 'Something has got to give.'"*³⁰

In one sense, Kelly comes full circle in his tale of Marks and Feinberg's "struggle to survive." The McKinnon firm's story is an informative account of the issues facing a large firm on the fast track to the big time, but few readers will be surprised by the interaction between the firm's pecuniary obsession and its work environment. By contrast, the next three stories run counter to knee-jerk expectations: The Mahoney firm demonstrates that there really is a reasonable, financially sound alternative to exploitative, hierarchical, and competitive modes of practice. Standish's Legal Division is a model of high-quality "professionalism" (in the traditional sense) operating in-house. And the Maine PUC shows "public-spirited" public-sector lawyers finding more challenge, fulfillment, and moral engagement than one might expect. With Kelly's last story, however, we return to greater consistency with stereotype.

30. *Id.* at 162.

Marks and Feinberg is a four-lawyer firm specializing in plaintiffs' civil rights litigation and criminal defense work. Both Marks and Feinberg are 1960s graduates of prestigious law schools who have spent virtually their entire professional lives doing what they believed was right. Their practice has included school desegregation, employment discrimination, voting rights, and criminal defense. They have been strong supporters of the ACLU and have worked against the death penalty. They are highly respected by other lawyers for their skill and diligence; their trial and appellate track records are excellent. Their clients find them to be intelligent, honest, and skillful. Marks and Feinberg contribute to the educational and scholarly growth of the profession through teaching at law schools and publication. And they are in danger of going broke.

Unlike the Mahoney firm, which has a substantial base of institutional clients and transactional work to subsidize its pro bono commitment, Marks and Feinberg have devoted themselves almost exclusively to direct service to the relatively powerless and impoverished. They simply do not have well-paying, steady work with which to sustain the firm's economic vitality while they pursue their moral agenda. They have a small amount of personal injury work, but not enough to improve their cash flow. Consequently, these very *good* (in both senses of the word) lawyers are barely making ends meet after years of hard work.

The firm confronts painful choices. It recently has begun a modest marketing campaign, which includes a professionally produced firm brochure designed to appeal more to fee-paying clients than to highlight the firm's civil rights background. Alan Marks reluctantly has embarked on a "power lunch" program to solicit remunerative referrals from contacts in the legal profession. Some of this effort has produced business, but the firm continues to struggle. Meanwhile, Marks and Feinberg wonder how much longer they can hold out before putting their souls on the auction block. Feinberg "remarks sarcastically, 'Next for us is radio and TV.'"³¹

C. THE ANALYSES

1. *Analysis of the Stories*

Kelly steps into the foreground to offer his observations on each story as a lesson in professionalism. Marks and Feinberg's traditional ideals and virtues—their commitment to craftsmanship, excellence, knowledge, and "cause" lawyering—are not enough in today's lawyering environment. A firm that resists adapting its concept of professionalism to include business and marketing skills may find itself doomed to extinction as close to one million lawyers struggle for survival. The Maine PUC experience illustrates the ambiguities about role, mission, and loyalty that face lawyers whose client is the "public." And it also exemplifies a significant trend in the legal profession toward narrow, technocratic specializa-

31. *Id.* at 159.

tion. The acquisition of specialized expertise, rather than generalized wise judgment, is increasingly becoming the vehicle for lawyers' exercise of influence. This development is most readily seen in the growth of influence of in-house counsel, who develop an expertise upon which the corporate client becomes dependent. The PUC story shows that the trend has also extended beyond the in-house realm.

The Standish story illustrates several points. It shows the potentially antagonistic relationship between outside counsel and its client. Standish's legal department exemplifies the advantages that can accrue when a company treats its in-house counsel as a valuable resource. And the story suggests the potential for conflict as that resource seeks comparable recognition in the company's compensation structure.

Kelly's comparisons between the McKinnon and Mahoney firms are particularly insightful and thoughtful. An academic might feel sorely tempted to disdain McKinnon as stereotypically avaricious and to idealize Mahoney as having gotten it "right." But Kelly, to his credit, eschews facile judgment in favor of close analysis of the implications of the two firms' very different concepts of professionalism.

McKinnon in some respects resembles an ideal liberal Lockean state: an association forged from the mutual advantage it offers for the acquisition of property. Its citizens (i.e., the partners) clearly understand this central purpose, but otherwise tolerate a relatively high level of heterogeneity of values, viewpoints, and opinions. This openness facilitates the community's functioning by enhancing its ability to accommodate the diversity produced by its growth strategy. The organizational style is generally loose, allowing freedom to maximize one's wealth-creating potential. Citizenship is contingent on proof of value to the community's central purpose, and political power is shared between those who have demonstrated the greatest ability to advance that purpose.

If stability of the firm is a measure of its success, McKinnon's style offers both strengths and weaknesses. Its use of money as the organizing value of the firm has certain advantages. It simplifies decision making by providing a clear, objective, and universal metric against which to compare considerations; little agonized soul-searching is involved when the question is whether a course of action will increase profitability. It can promote fairness by the same means; a participant's worth to the enterprise is more easily judged in monetary than more subjective terms. And it allows the firm to resist raiding so long as business is good. But McKinnon's style also creates risk, especially during lean times. One risk is that attorneys will feel little attachment to the firm and will leave the same way they came. Money is, after all, a uniquely liquid kind of glue. Another risk is that the firm's aggressive growth strategy and its practice of maximizing partners' income have probably leveraged the firm's capital against anticipated future growth. The firm may be less stable in a downturn or with the loss of a major client or rainmaker.

The Mahoney firm has staked its future on loyalty to largely nonmonetary values. Growth threatens rather than sustains the firm's way of life. Mahoney is vulnerable to "values entropy": As the size of its internal community increases, so too does the likelihood that its homogeneous culture will lose its integrity. It is also vulnerable to opportunism: The maintenance of its culture depends on the senior partnership's continued willingness to invest a substantial amount of their capital in their subordinates' loyalty to the firm. And decision making is surely more cumbersome in an egalitarian tradition that prizes an array of nonfinancial values. Mahoney's distinctive culture, so much the product of one man's vision and commitments, also may not outlive that man's leadership.

On the other hand, Mahoney in some respects may be the more secure of the two firms. Its capital is invested in the firm. Its debt is low. It has cultivated a client base that values a long-term relationship and whose loyalty is to the firm rather than to any one lawyer. Financially austere times may be less stressful for a firm that has also nurtured noneconomic values. Its careful recruiting may well have assembled a critical mass of lawyers whose shared ethos is sufficiently cohesive to weather the loss of Chris Schultz. And who knows, maybe the firm's leaders' essentially optimistic view of human nature—as motivated more strongly by nonmonetary rewards such as cooperativeness, loyalty, altruism, mutual respect, and dignity—will prove more accurate in the long run.

2. *Analysis of the Concept of Professionalism*

Kelly observes that, for better or worse, the American legal profession has undergone irreversible structural change with "the exponential growth in the size of practices and incomes of corporate lawyers practicing in large firms."³² It may seem self-evident that no single concept can define what it means to be a member of a professional group that is the size of the population of, say, Baltimore or Indianapolis. But Kelly's contribution is to underscore the emergence of the law-practice organization as the defining force in legal professionalism. He rejects dualistic models, such as W. Richard Scott's distinction between professional approaches (which seek to invest horizontally in each worker a relatively comprehensive set of basic skills and values) and bureaucratic ones (which divide tasks vertically into a rule- and hierarchy-driven system of specialization).³³ As Kelly points out, several of his examples share important aspects of both of Scott's models.

32. *Id.* at 205.

33. Another model that Kelly ultimately concludes is inapposite is Alasdair MacIntyre's definition of "practice," which distinguishes between goods internal to the practice (i.e., intrinsically arising out of participation in the practice) and goods that are external to the practice, such as money, status, prestige. MacIntyre asserts that to the extent a society pursues external goods, it risks corruption and perhaps loss of its virtues. Kelly notes that MacIntyre's distinction is somewhat artificial, that goods and motives can be multifaceted, and that a healthy base of external goods is in any event necessary to support goods that are internal to social practices (such as art).

To Kelly, a more apt metaphor is "a landscape of small communities or villages," which "captures something of the closeness and interdependency, the character-defining role of the contemporary practice organization."³⁴ Kelly offers a useful list of the basic elements of the organization as a systematic approach to evaluate the validity of the organization's story. Those elements include its history, economic structure, clients, style, handling of conflicts, and leadership. He briefly applies his list to the stories he has told of the five practice organizations. He concludes by noting that story-telling about law practice is a venerable tradition in the profession, and he urges that

We need to extend these stories about the practice of law to lawyers and the organizations in which they work and make them as true as we can so that we can learn from the joys, the disappointments, the battles, and the cares that inform the working lives of lawyers.³⁵

Kelly's necessarily truncated sample unfortunately does not include close consideration of several important segments of the profession. For example, although he does examine one small-sized firm, Kelly's intra-firm focus omits the most prevalent form of practice organization in America: the solo practitioner. Although their market share has declined steadily over the past three decades, solo practitioners by far continue to occupy the most common practice niche. According to the American Bar Association, the most recently available data indicate that solo practitioners comprise almost forty-five percent of the total number of attorneys in private practice.³⁶ Solo practitioners are not misanthropic hermits; they work within a larger organizational structure of the local legal and business community and organized bar. They have their own stories to tell about their histories, economic circumstances, clients, style, handling of conflicts, and vision for the future. For example, solo practitioners may be more specialized than is commonly assumed, and sometimes stretch the boundaries of their insularity to varying degrees, from office- and resource-sharing arrangements to loose networking systems.³⁷ Another omitted category is the entrepreneurial plaintiffs' attorney. Those lawyers also face a distinctive set of economic challenges, ethical issues, and client relationships (especially in class actions) that are quite different from firms with fee-paying clients. And they can be confronted with exogenous pressures on their practice, for example in the potentially avulsive changes to the landscape in the form of proposed federal legislation to modify tort and securities liability.³⁸

34. *Id.* at 207.

35. *Id.* at 221.

36. Barbara L. Morgenstern, *Strength in Networking: How the Organized Bar is Gaining One Solo at a Time*, 81 A.B.A. J. 83 (1995). The solo practitioner market share has declined steadily from 61% in 1960. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 1993 204, Table 326 (1993).

37. Morgenstern, *supra* note 36, at 83; Darlene Ricker, *On Your Own*, 80 A.B.A. J. 62 (1994).

38. For a brief overview of the proposed changes, and the ABA's opinion on them, see American Bar Association, *Differences of Opinion*, 81 A.B.A. J. 74 (1995).

II. LAWYERS' LIVES

Kelly's nonlaw background is in medieval history. His familiarity with the basic social unit of that period—the semi-autonomous village—may contribute to his ultimate choice of metaphors through which to interpret his impressions of the legal profession. There are, of course, other planes along which to transect the profession and other perspectives on the phenomenon of practice organizations.

For example, Kelly compares the legal profession's current perception of a conflict between its traditional conception of professionalism and the demands of its business environment to the broader social and economic transformations of the Progressive Era.³⁹ He suggests that for the most part over the past century, "the organization or structure of the legal profession escaped the forces that generated the Progressive debate"⁴⁰—the emergence of the modern industrialized state, with its concomitant exploitation of the labor, health, and safety of its workers; creation of impersonal, hierarchical business organizations; concentration of enormous inequalities in wealth and power; and corruption of the political process. More recently, however, economic realities have begun to intrude on the relative insularity of the legal profession, introducing the button-down equivalent of the sweatshop and the bureaucratic organizational structure into its realm as well.

Viewed more generally, this tension reflects a deeper and much older contradiction in American legal, philosophical, economic, and social values. Many imaginations are caught between the competing images of Nathaniel Hawthorne's *Leatherstocking Tales* and Charlie Chaplin's *Modern Times*: the citizen as the independent frontiersman as opposed to the dehumanized drone of capitalist production. Somewhere between those polarities is the erstwhile social mobility of Abraham Cahan's *David Levinsky*.

In her rich description of its central role in the evolution of the concept of and justification for property rights in colonial New York, Elizabeth Mensch captures the essence of this contradiction:

On the one hand there was much talk about the voluntary effort, initiative, and industrious self-reliance required if settlers were ever to cultivate the vast New York wilderness. Provincial leaders had a great fondness for the image of the hearty republican farmer cutting his way through the dense New York forest; his was the independent spirit which turned untamed wilderness into settled farmland. Yet the same self-reliant spirit which led to rapid settlement seemed at odds with another assumed requirement for development—the secured concentration of resources and accumulation of capital which would allow for a productive work force and investment in new enterprises. Thus, the pleasing image of the independent farmer was countered by the equally pleasing, but contradictory, image of an or-

39. KELLY, *supra* note 1, at 204-06.

40. *Id.* at 205.

ganized (dependent) work force efficiently transforming provincial resources into capital for new commercial ventures.⁴¹

The legal profession in at least one sense is experiencing its version of this conflict. Substitute Atticus Finch for the sturdy yeoman farmer and a nameless Cravath associate for the productive, organized worker, and you have a rough parallel. Kelly observes that "[o]nly the unusually powerful idea of professionalism associated with our cultural idol of individualism—and the strong market controls professions until recently exercised—have preserved the privileged position of the professions and kept larger cultural developments from overtaking the professions before the late 1970s and early 1980s."⁴²

Within Kelly's observation lies one particular aspect of the contradiction—the "individualism" of the professional ideal is made possible by sacrifice of the "individualism" of the free market. Yet, as C. Edwin Baker has argued, and as the overall thrust of Kelly's book illustrates, "the possessive market operates in a particularly coercive manner to determine what choices are made in the worlds of production and commerce. . . . Enterprises that do not adopt profit-maximizing strategies, that do not adopt available efficient practices, will move toward bankruptcy."⁴³ Baker's "market determination thesis" thus asserts that, "because the market operates to determine the content of our social world, we can be free only if we can control the market."⁴⁴

Kelly's book led me to speculate about possible approaches through the discipline of particular interest to me, clinical psychology. One, more from the bottom up, would be to consider the well-being of the villagers themselves as individuals. A second would be to follow up on another metaphor for the practice organization suggested in *Lives of Lawyers*: "The study of institutions is in some ways comparable to the clinical study of personality."⁴⁵ The clinical study of personality has advanced a considerable distance since Philip Selznick made that observation in 1957. Little more than a brief mention of each approach is possible here.

A. VILLAGERS

There is reason to suspect that the state of our villagers' overall well-being—and consequently the practice communities' most valuable resource—is in trouble. Law is a stressful profession, and the developments noted by Kelly indicate that it is likely to become more so. Recognition of the cost of that stress to the members of the legal profes-

41. Elizabeth Mensch, *The Colonial Origins of Liberal Property Rights*, 31 *BUFF. L. REV.* 635, 644-48 (1983).

42. KELLY, *supra* note 1, at 206.

43. C. Edwin Baker, *Property and its Relation to Constitutionally Protected Liberty*, 134 *U. PA. L. REV.* 741, 785-86 (1986).

44. *Id.*

45. KELLY, *supra* note 1, at 217, quoting PHILIP SELZNICK, *LEADERSHIP IN ADMINISTRATION* 141-42 (1957).

sion, and to those who depend on them, has been hampered by the myth that lawyers are a special breed that thrives on stress.⁴⁶

One review of the literature found ample documentation for increasing "concern over attorney impairment due to alcoholism, drug addiction, depression, and a myriad of other psychological/medical problems . . ."⁴⁷ For example, the data indicate that the incidence of depression among lawyers approaches thirty percent.⁴⁸ That rate is more than *ten times* the base rate in the general population.⁴⁹ Apparently, "the acculturation process of law school and during the first 2 years of practice" contributes to increased depression.⁵⁰ Significantly elevated rates of alcohol abuse also have been found among attorneys: While estimates of the national rate of alcohol abuse or dependence ranges from two to ten percent,⁵¹ the rate among lawyers starts at eighteen percent and climbs with the length of practice to twenty-five percent.⁵² There is also evidence that the

46. One journalist put it this way:

Have you heard the one about the lawyer who worked around the clock dealing with irate clients, angry judges and impossible dead-lines?

He had a heart attack.

Or so it might go if, instead of the money-grubbing shysters depicted in lawyer jokes, attorneys were seen as ordinary, often flawed, individuals capable of being overwhelmed by their jobs.

Phil Brinkman, *Why Lawyers Are Crashing, Burning: Stress Leads Many to Leave the Profession*, WIS. ST. J., Oct. 16, 1994, at 1A. In some respects, however, lawyers as a group exhibit greater resistance to stress than do physicians. See Adam J. Krakowski, *Stress and the Practice of Medicine: Physicians Compared With Lawyers*, 42 J. PSYCHOTHER. PSYCHOSOM. 143 (1984).

47. G. Andrew H. Benjamin et al., *Comprehensive Lawyer Assistance Programs: Justification and Model*, 16 LAW & PSYCHOLOGY REV. 113 (1992).

48. *Id.* at 114. See also G. Andrew H. Benjamin et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*, 13 J. LAW & PSYCHIATRY 233 (1990).

49. Darrel A. Regier et al., *One-Month Prevalence of Mental Disorders in the United States*, 45 ARCH. GEN. PSYCHIATRY 977, 980, Table 3 (1988). The one-month prevalence rates for major depressive episode in the National Institute of Mental Health (NIMH) Epidemiologic Catchment Area (ECA), which includes New Haven, Baltimore, Durham, St. Louis, and Los Angeles, ranges from 1.5% to 2.6%. The life-time prevalence rate is higher, ranging from 3.7% to 6.7% in three of the five ECA sites. Lee N. Robins et al., *Lifetime Prevalence of Specific Psychiatric Disorders in Three Sites*, 41 ARCH. GEN. PSYCHIATRY 949, 952, Table 1 (1984).

50. John A. Chiles et al., *Who Smokes? Why?: Psychiatric Aspects of Continued Cigarette Usage Among Lawyers in Washington State*, 31 COMPREHENSIVE PSYCHIATRY 176, 177 (1990), citing G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 2 AM. BAR FOUNDATION RES. J. 225 (1986). Acculturation to the "lawyer's persona" also may adversely affect lawyers' relational style in their personal lives. E.g., Adrienne Drell, *Chilling Out*, 80 A.B.A. J. 70 (1994).

51. Regier, *supra* note 49, at 980, Table 3 (one-month prevalence rate from 2% to 4.3%); Benjamin, *Comprehensive Lawyer Assistance Programs*, *supra* note 47, at 115, citing *Alcohol and Other Drug Abuse Affects the Lives of Millions of Americans, The Fact Is . . .*, NATIONAL CLEARINGHOUSE FOR ALCOHOL AND DRUG ABUSE INFORMATION (October, 1988).

52. Benjamin, *Comprehensive Lawyer Assistance Programs*, *supra* note 47, at 115.

stresses are particularly taxing for women, who often bear the added burdens of sexism and unequal relational demands.⁵³

Other data show that a large and increasing proportion of lawyers are dissatisfied with their practice. For example, an American Bar Association survey found widespread dissatisfaction across the spectrum of practice environments (private, government, and in-house corporate practice) and up and down the seniority ladder.⁵⁴ Women report even higher levels of dissatisfaction.⁵⁵

The sources of stress and dissatisfaction are not mysterious:

[T]he [ABA] survey confirms that there are serious problems in the workplace even for those who are satisfied overall. Problems concerning training, feedback from superiors, time for one's nonwork life, among others, are widespread throughout the profession. Also, serious problems concerning control of work, office intrigue, and even financial reward exist in many firms and job settings.⁵⁶

The workload is staggering, especially at large corporate firms where associates are expected to *bill* well over two thousand hours a year.⁵⁷ Work environments have become more impersonal, competitive, and dehumanized.⁵⁸ Observers lament the increased level of interpersonally hostile and aggressive behavior between adversaries.⁵⁹ And, as Kelly notes, rapid growth in the attorney labor pool has produced an excess supply of lawyers vying for limited rewards.

For women lawyers, the work environment presents an even more negative experience. They report that their work lacks intellectual challenge, their work atmosphere is not warm and personal, they have less chance of advancement than their male colleagues, they see more political backbiting, and they lag behind their male counterparts in compensation.⁶⁰ They report that sexual harassment remains a serious problem and may even be increasing: "Every female junior associate who responded to the

53. Elizabeth Johns Clark & Patricia Perri Rieker, *Gender Differences in Relationships and Stress of Medical and Law Students*, 61 J. MED. EDUC. 32 (1986). See also Judith L. Maute, *Balanced Lives in a Stressful Profession: An Impossible Dream?*, 21 CAP. U. L. REV. 797, 801 (1992) (describing survey data indicating that women face such difficulties). Women in other, even more sexist cultures also face significant occupational stress. E.g., P.N.O. Tharakan, *Occupational Stress and Job Satisfaction Among Working Women*, 18 J. INDIAN ACADEMY OF APPLIED PSYCHOLOGY 37 (1992).

54. ABA YOUNG LAWYERS DIVISION, *THE STATE OF THE LEGAL PROFESSION* (1990).

55. See Ronald L. Hirsch, *Are You On Target?*, 12 BARRISTER 17, 19 (1985) (discussing results of Young Lawyers' Division survey); Bruce Rutledge, *Women Lawyers: A Status Report: A Demographic Look at How Women Are Faring in their Careers*, 15 BARRISTER 30 (1991) (same); Ronald L. Hirsch, *Will Women Leave the Law?*, 16 BARRISTER 22, 24 (1989) (same).

56. Hirsch, *Are You on Target?*, *supra* note 55, at 18.

57. For a description of how that expectation translates into an actual work day, see MARY ANN GLENDON, *A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY* 30 (1994).

58. Maute, *supra* note 53, at 801.

59. E.g., James E. Brill, *Save the Whales: Among the Many Worthy Causes, Let's Also Save the Profession*, 79 A.B.A. J. 110 (1993); Stephanie Goldberg, *ABA Journal Roundtable: Identity Crisis*, 80 A.B.A. J. 74 (1994).

60. Hirsch, *Will Women Leave the Law?*, *supra* note 55, at 24-25.

survey said she experienced or witnessed an incident of sexual harassment during her career."⁶¹ Only women in solo practice, who do not have to contend with male supervisors, report dissatisfaction levels commensurate with men.⁶² And anecdotal evidence suggests that women who form their own firms find greater job satisfaction.⁶³

More is at stake than lawyers' job satisfaction. The special position of trust and responsibility for others' interests that attorneys hold in society amplifies the consequences of attorneys' impairment. There is a growing "perception that professional infractions and malpractice committed by lawyers often are caused by behavioral/medical impairment. For example, in 1988, the [ABA] determined that 27 percent of all nationwide disciplinary cases involved alcohol abuse, just one of the many sources of lawyer impairment."⁶⁴

Current theories of psychopathology are skeptical that environmental processes alone adequately explain etiology, including for depression and substance abuse. Instead, many researchers adopt a diathesis-stress model, under which predisposing factors interact with environmental stressors to precipitate pathology.⁶⁵ With a subpopulation depression rate ten times that of the general population base rate, however, lawyers plainly are at risk for reactive depression. In addition, research into the phenomenon of "burnout," which may be prodromal to clinical symptomatology, has emphasized the role of the work environment in producing the burnout triad of: (1) emotional exhaustion (caused by excessive affective demands in interpersonal situations), (2) depersonalization (excessive emotional detachment, such as callousness or cynicism, to protect the professional from continuing emotional demands), and (3) feelings of low personal accomplishment (feelings of inefficacy).⁶⁶ Thus, while it is far from clear that a stressful work environment alone "causes" depression and other ills in all cases, stress appears to be an important contributing factor to an array of problems.

Clearly the problem deserves careful attention. While some work has been done, prospects for major change in the immediate future are not encouraging. One worthwhile effort involves development and implementation of Lawyer Assistance Programs (LAPs). Such programs seek

61. Rutledge, *supra* note 55, at 32.

62. Hirsch, *Will Women Leave the Law?*, *supra* note 55, at 25.

63. Deborah Graham, *Law's New Entrepreneurs*, 81 A.B.A. J. 54 (1995).

64. Benjamin, *Comprehensive Lawyer Assistance Programs*, *supra* note 47, at 117-18.

65. See generally L. WILLERMAN & D. COHEN, *PSYCHOPATHOLOGY* (1990).

66. See generally CHRISTINE MASLACH, *BURNOUT: THE COST OF CARING* (1982); ROBERT T. GOLEMBIEWSKI & ROBERT F. MUNZENRIDER, *PHASES OF BURNOUT: DEVELOPMENTS IN CONCEPTS AND APPLICATIONS* (1988); Christine Maslach & Susan E. Jackson, *Burnout in Organizational Settings* in 5 *APPLIED SOCIAL PSYCHOLOGY ANNUAL: APPLICATIONS IN ORGANIZATIONAL SETTINGS* 133-54 (S. Oskamp ed., 1984); Susan E. Jackson et al., *Toward an Understanding of the Burnout Phenomenon*, 71 *J. APPLIED PSYCHOLOGY* 630 (1986); Sophia Kahill, *Symptoms of Professional Burnout: A Review of the Empirical Evidence*, 29 *CANADIAN PSYCHOLOGY* 284 (1988).

to identify and offer assistance to lawyers at risk for impairment. According to one model, an LAP should include the following elements:

confidentiality and separation from the disciplinary authority; prevention and educational services; identification and evaluation of distressed lawyers; referral to treatment resources and the provision of treatment in limited circumstances; and the right of the LAP to advocate before the disciplinary authority, when appropriate to promote therapeutic outcomes for distressed lawyers.⁶⁷

Despite the potential savings in both human and economic terms of a preventive rather than purely disciplinary approach, however, only a handful of jurisdictions have implemented comprehensive LAP programs. Denial, mistrust of mental health professionals, fear of breach of confidentiality, and short-sighted economic priorities are among the reasons suggested for the shortfall.⁶⁸

In any event, even if more widely available, LAPs would address only incipient and extant impairment in individual lawyers and not the environmental stressors themselves. Accordingly, some observers have called for a reexamination of the profession's core premises, particularly its often mercenary enchantment with economic values.⁶⁹ But it is difficult to imagine that such calls will be much heeded.

Out of Kelly's stories, for example, the Social Darwinism of the McKinnon firm probably comes the closest to describing (even if in somewhat exaggerated terms) the work environment of big-firm corporate practice today. Not surprisingly, its lawyers appeared to be the most stressed. The firm's growth, hiring, and advancement policies are fueled by a continuous supply of human resources which are consumed in the competitive struggle. Although the firm's partners complained of the scarcity and increased cost of those resources, the problem was regarded primarily as one of cost. Conservation for the sake of the resource's intrinsic worth apparently was not considered. Given the continuous flow into the already deep labor pool, McKinnon's choices seem economically rational.

The Mahoney firm's work environment, by contrast, might have been engineered as a model to avoid the problems listed above. Its nurturance of commitment to noneconomic values and its prodigious efforts to reduce alienation among its personnel target significant sources of strain and stress.⁷⁰ But Mahoney's story seems to be the most anomalous. It

67. Benjamin, *Comprehensive Lawyer Assistance Programs*, *supra* note 47, at 119.

68. *Id.* at 135. Some far less sweeping programs to provide assistance to lawyers have been implemented. See, e.g., Phil Brinkman, *Why Lawyers are Crashing, Burning: Stress Leads Many to Leave the Profession*, *Wis. St. J.*, Oct. 16, 1994, at 1A (describing Wisconsin's lawyers' helpline, sponsored by the state bar association).

69. E.g., Maute, *supra* note 53.

70. See Suzanne C. Kobasa, *Commitment and Coping in Stress Resistance Among Lawyers*, 42 *J. PERSONALITY AND SOCIAL PSYCHOLOGY* 707, 714 (1982) (finding that lawyers who are committed and who avoid regressive coping strategies show lower signs of strain, even when faced with stressful circumstances).

would not be surprising to learn that job seekers had petitioned Kelly to disclose the identity of this enticing, rare oasis.

B. VILLAGE PERSONALITIES

The combination of Selznick's comparison of institutional to individual personality with Kelly's observations on the formative influence of the practice organization suggests another area for research. "Personality," while variously defined by psychological theorists, is generally understood to mean a collection of relatively stable traits which strongly influence behavior patterns. Practice organizations are of course composed by and of people, and take their enduring and defining characteristics both in creating and responding to environmental forces from their constituent members. Study of the personality characteristics of the lawyers in a variety of practice organizations, and of the interaction between the dominant personality characteristics within those organizations and the quality of the work environment would be most useful. In addition, a longitudinal study that tracked variance in personality characteristics through law school and into practice also might yield interesting results.

For example, recent psychological research has proposed a dimensional (as opposed to a categorical) model of personality that consists of five factors or traits.⁷¹ A variety of instruments are available for assessing personality, including instruments under the Five-Factor Model (FFM).⁷² The dimensional model claims that personality is best understood as a combination of traits and sub-traits possessed in greater or lesser degrees by an individual. Thus, a person might have a relatively high degree of negative emotionality, such as angry hostility and vulnerability to stress; a high degree of assertiveness and activity level; a low receptivity to one's own and others' feelings and to reexamination of one's values; a low disposition to believe in others' honesty, a high readiness to manipulate others, a low concern and empathy for others' welfare, and low modesty; a strong sense that one is capable, an inclination to orderliness and attention to detail, high achievement-striving, and strong self-discipline.⁷³

71. For an overview of the so-called Five-Factor Model and its clinical applications, see *PERSONALITY DISORDERS AND THE FIVE-FACTOR MODEL OF PERSONALITY* (Paul T. Costa, Jr. & Thomas A. Widiger eds., 1994) [hereinafter *PERSONALITY DISORDERS*].

72. PAUL T. COSTA, JR. & ROBERT R. MCCRAE, *REVISED NEO PERSONALITY INVENTORY AND NEO FIVE-FACTOR INVENTORY: PROFESSIONAL MANUAL* (1992) [hereinafter *NEO PI-R MANUAL*]. Those factors consist of: (1) Neuroticism ("N") (emotional stability, and the general tendency to experience negative affects), (2) ("E") Extraversion (outgoingness, sociability), (3) Openness ("O") (intellectual and aesthetic curiosity, flexibility, and independence, as well as interest in novel experience), (4) ("A") Agreeableness (altruistic tendencies, noncompetitiveness), (5) ("C") Conscientiousness (achievement-orientation). Each factor is then divided into a subset of facets: (1) N: anxiety, angry hostility, depression, self-consciousness, impulsiveness, and vulnerability; (2) E: warmth, gregariousness, assertiveness, activity, excitement-seeking, and positive emotions; (3) O: fantasy, aesthetics, feelings, actions, ideas, and values; (4) A: trust, straightforwardness, altruism, compliance, modesty, and tender-mindedness; (5) C: competence, order, dutifulness, achievement striving, self-discipline, and deliberation.

73. See *id.* at 16-18 (describing facet scales).

According to the dimensional model, personality disorders reflect extreme degrees of traits possessed in more moderate levels by everyone. For example, in excessive measures, the traits of manipulateness, immodesty, and low concern for others become the exploitativeness, grandiosity, arrogance, and self-centeredness of the Narcissistic Personality Disorder.⁷⁴ And the traits of manipulateness, low straightforwardness, low modesty, unreliability, self-indulgence, and hostility can become the abusiveness, dishonesty, and ruthlessness of the Antisocial Personality Disorder.⁷⁵

Another, more venerable tool for assessing a broad range of psychological characteristics, including personality traits, is the Minnesota Multiphasic Personality Inventory, now available in a recently restandardized second edition. The MMPI and MMPI-2, which are linked to a massive research base involving decades of study, provide a wealth of information about a person's personality characteristics; emotional condition and stability; need for autonomy, dependency, and achievement; perception of environment, especially the social environment; salient modes of interpersonal relation (including specifically relations with persons of the opposite sex); sexual identity; reaction to stress, coping strategies, and defenses; self-concept; and overall level of psychological adjustment.⁷⁶

In addition to research of the kind mentioned above into specific symptomatology (such as depression and substance abuse), more general psychological research into the lives of lawyers may prove valuable in assessing the state and future of the profession. If it can be shown that persons with distinctive personality traits, coping strategies, emotional characteristics, and style of relationship are attracted to the legal profession, and more particularly to specific kinds of practice organizations, then personality theory makes available an impressive body of research for understanding and predicting interactions. And the potentially strong socializing influence of legal education and various kinds of practice experiences in shaping behavior and personality also would be a fruitful area of study. In other words, we might learn much about the village, its dynamics, and its likely future by studying the most salient aspects of its inhabitants' personalities.

74. Thomas A. Widiger et al., *A Description of the DSM-III and DSM-IV Personality Disorders with the Five-Factor Model of Personality*, in PERSONALITY DISORDERS, *supra* note 71, at 41, 48.

75. *Id.* at 44-45. For a clinical profile of the antisocial or psychopathic personality, see H. CLECKLEY, *THE MASK OF SANITY* 204-25 (1982).

76. For an excellent guide to the MMPI-2, see JOHN R. GRAHAM, *MMPI-2: ASSESSING PERSONALITY AND PSYCHOPATHOLOGY* (2d ed. 1993). For an overview of the MMPI's history, a description of the revisions made in the MMPI-2, and citation to leading works in the vast MMPI literature, see Yossef S. Ben-Porath, *The MMPI and MMPI-2: Fifty Years of Differentiating Normal and Abnormal Personality* in DIFFERENTIATING NORMAL AND ABNORMAL PERSONALITY (S. Stract & M. Lorr eds.) (forthcoming).

CONCLUSION

Michael Kelly continues his long and distinguished career of service to the legal profession by taking us on a guided safari to observe lawyers in their natural habitats. *Lives of Lawyers* offers an informative and provocative look at a profession in the midst of a profound transition. Kelly's contribution is to combine an historical perspective with contemporary narrative, resulting in rich insights into the continuing story that is lawyers' lives.

